

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RIGOBERTO RODRIGUEZ MACEDO,

Petitioner,

v.

SCOTT SPEER ,

Respondent.

CASE NO. 2:25-cv-00166-JHC-BAT

**REPORT AND  
RECOMMENDATION**

Petitioner is serving a state criminal sentence at the Stafford Creek Corrections Center imposed by the King County Superior Court on June 18, 2021 in case number 18-1-06885-8-SEA. *See* Dkt. 1 at 1 (habeas petition). Using a form 28 U.S.C. § 2241 habeas petition, Petitioner challenges this conviction and sentence claiming his Sixth Amendment rights were violated because he was “arraigned without counsel.” Dkt. 1 at 2 and 6. Petitioner also attached motions for a “Brady Order,” Standby Counsel, Judicial Notice, and Certification, and further applied to proceed *in forma pauperis* (IFP). *See* Dkt. 1 (attachments and IFP application).

The Court has reviewed the federal habeas petition and recommends it be DISMISSED with prejudice for the following reasons.

(1) Although Petitioner submitted a form § 2241 habeas petition, “28 U.S.C. § 2254 is the exclusive vehicle for a habeas relief that is available to him because he is a prisoner

1 serving a sentence pursuant to a state court judgment, and challenges that judgment. *White v.*  
2 *Lambert*, 370 F.3d 1002, 1009-10 (9th Cir. 2004), overruled on other grounds by *Hayward v.*  
3 *Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc). The Court thus finds Petitioner's request for  
4 habeas relief corpus must be considered as brought under 28 U.S.C. § 2254.

5 (2) Petitioner's § 2254 habeas petition is time-barred. Petitioner avers he did not  
6 appeal his King County Superior Court conviction or seek state collateral relief. *See* Dkt. 1.  
7 Because Petitioner challenges his state court conviction and judgment, his § 2254 habeas petition  
8 is subject to a one-year statute of limitations. Under 28 U.S.C. § 2244(d)(1)(A), "[t]he limitation  
9 period shall run from . . . the date on which the judgment became final by the conclusion of  
10 direct review or the expiration of the time for seeking such review . . . ." Additionally, "[t]he  
11 time during which a properly filed application for State post-conviction or other collateral review  
12 with respect to the pertinent judgment or claim is pending shall not be counted toward any period  
13 of limitation under this subsection." *See* 28 U.S.C. § 2244(d)(1) and (2).

14 Petitioner did not appeal his King County Superior Court conviction, and thus his state  
15 court judgment became final for purposes of calculating the federal habeas statute of limitations  
16 when the time to appeal the conviction expired, which under Washington law is 30 days  
17 following imposition of the judgment. *See Gonzalez v. Thaler*, 565 U.S. 134, 147-154 (2012);  
18 Washington State Court Rules of Appellate Procedure (RAP) 5.2. Petitioner's judgment  
19 therefore became final in July 2021, and the habeas statute of limitations began running from that  
20 date. As Petitioner did not properly file any petition for collateral relief, the habeas statute of  
21 limitations continued to run from July 2021 until it expired a year later in July, 2022, well before  
22 the date Petitioner placed the present habeas petition in the prison mail in January 2025.  
23 Petitioner's habeas petition is thus time-barred and should be dismissed.

1 (3) Because the present habeas petition is time-barred, the Court considers whether there  
2 are any equitable reasons to toll or extend the statute of limitations. The Court finds none.  
3 Petitioner obviously knew in 2018 whether he was or wasn't represented at arraignment. As his  
4 claim does not rely upon new facts or law made retroactive to collateral relief, there are no legal  
5 or equitable grounds to permit Petitioner to now raise the claim in an untimely manner.

6 The Court accordingly recommends the present habeas petition be dismissed with  
7 prejudice as time-barred. If the recommendation is adopted, Plaintiff's motions for Brady Order,  
8 Judicial Notice, Standby Counsel and Certification should be stricken as moot.

9 (4) The Court also recommends DENYING Petitioner's IFP application. Petitioner's  
10 trust balance shows he has an average spendable balance of \$246.16. He thus has the resources to  
11 pay the \$5.00 filing fee.

12 (5) If the Court dismisses this case and Petitioner wishes to appeal the dismissal of  
13 his § 2254 federal habeas petition, he may do so only after obtaining a certificate of appealability  
14 (COA) from a district or circuit judge. A COA may issue only if Petitioner makes "a substantial  
15 showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2). Petitioner may  
16 satisfy this standard "by demonstrating that jurists of reason could disagree with the district  
17 court's resolution of his constitutional claims or that jurists could conclude the issues presented  
18 are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322,  
19 327 (2003).

20 Issuance of a COA should be denied because no reasonable jurist would disagree the  
21 present habeas petition is time-barred. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).  
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1 (6) This Report and Recommendation is not an appealable order. Therefore,  
2 Petitioner should not file a notice of appeal seeking review in the Court of Appeals for the Ninth  
3 Circuit until the assigned District Judge enters a judgment in the case.

4 Objections, however, may be filed no later than **February 11, 2025**. The Clerk shall note  
5 the matter for **February 14, 2025**, as ready for the District Judge's consideration. The failure to  
6 timely object may affect the right to appeal.

7 DATED this 28th day of January, 2025.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge